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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. LAURA PATRICIA HERNANDEZ, Defendant and Appellant.	G040505 (Super. Ct. No. 07CF2771) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard W. Stanford, Jr., Judge. Affirmed.

Sylvia Whatley Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Scott C. Taylor and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted defendant Laura Patricia Hernandez of all seven counts with which she was charged: two counts of attempted murder (Pen. Code, §§ 664, 187, subd. (a));[1] two counts of assault with a semiautomatic firearm (§ 245, subd. (b)); one count of possession of methamphetamine for purpose of sale (Health & Saf. Code, § 11378); one count of transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)); and one count of shooting at an occupied vehicle (§ 246). The jury found true allegations defendant committed attempted murder (on both counts 1 and 2) with premeditation, deliberation, and the specific intent to kill. The jury also found true various enhancements alleged against defendant, including she: personally discharged a firearm during the attempted murders (§ 12022.5, subd. (a); § 12022.53, subd. (c)); personally used a firearm while assaulting the victims with a semiautomatic firearm (§ 12022.5, subd. (a)); and was personally armed with a firearm in the commission of the Health and Safety Code violations identified above (§ 12022, subd. (c)). The court sentenced defendant to an aggregate term of seven years to life plus twenty years.[2]

Defendant raises four issues on appeal. First, she claims there was insufficient evidence to sustain the jury's findings defendant committed attempted murder (counts 1 and 2) with premeditation, deliberation, and the specific intent to kill. Second, defendant contends the court erroneously admitted hearsay evidence bearing on the issue of premeditation, and such error requires reversal. Third, defendant posits her counsel provided ineffective assistance in failing to request a jury instruction specifically

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[1] All statutory references are to the Penal Code, unless specified otherwise.

[2] The court selected count 1 as the principal term and ran counts two and six concurrently. Counts 1 and 2 required life sentences (§ 664, subd. (a)), plus "an additional and consecutive term of imprisonment in the state prison for 20 years" (§ 12022.53, subd. (c)). Count 6 entailed a seven year sentence, based on the midterm of three years (Health & Saf. Code, § 11379, subd. (a)), plus a four year enhancement (§ 12022, subd. (c)). Pursuant to section 654, the court stayed imposition of sentence on counts 3, 4, 5, and 7.

pertaining to the relationship between provocation and premeditation (CALCRIM No. 522). Finally, defendant asserts her convictions for possession and transportation of methamphetamine are not supported by substantial evidence because the prosecutor relied on a police officer's opinion testimony (based on a visual inspection) and circumstantial evidence rather than scientific testing to prove the nature of the substance found in the possession of defendant. We reject each of defendant's contentions and affirm the judgment.

FACTS

In approximately April of 2005, defendant (age 22 at the time) began an affair with Jose Castrejon. Castrejon and Guadalupe Ramirez Carillo had been married for 25 years. Castrejon told defendant he loved her and would divorce his wife to marry defendant. When Castrejon and defendant stayed together, the pair smoked "crystal" with a pipe. Ramirez knew about the affair, although Castrejon continued to live (at least some of the time) with Ramirez and their six children at a house on Magnolia Street in Santa Ana.

In June of 2005, Ramirez confronted defendant near Ramirez's residence. Ramirez asked defendant whether she felt any shame standing there. Defendant responded by noting the street was a public place.

On or about July 20, according to the testimony of Police Officer Mary Campuzano (who interviewed Ramirez and Castrejon on the night of the incident leading to the charges against defendant), defendant told Castrejon she would kill him, his wife, and his children if Castrejon would not leave his wife for defendant.

On July 22, Castrejon joined defendant and other friends (not including, obviously, Ramirez) for a birthday celebration. Defendant picked up Castrejon in a limousine at about 9:00 p.m. Defendant handed Castrejon $500 after he entered the

limousine. After several hours spent drinking alcohol, Castrejon returned to the Magnolia Street house to pick up his Lincoln Town Car automobile. Ramirez was waiting in the Chevy Silverado truck parked next to Castrejon's car. Ramirez expressed her anger and asked Castrejon to take her to a Jack in the Box restaurant. Castrejon agreed.

As Castrejon began driving the Lincoln Town Car, defendant stepped out of the nearby limousine. Castrejon stopped the car. Defendant walked to the driver's side and knocked on the window. The witnesses differed with regard to what occurred next. Castrejon testified defendant simply told him to hurry up, and that Ramirez "told . . . off" defendant using obscenities. Officer Campuzano testified Castrejon told her on the night of the incident that defendant yelled obscenities at Castrejon and Ramirez. Ramirez testified defendant tried to open the car door and stated Castrejon should go with her because Ramirez was not "enough of a woman" for Castrejon. Ramirez also testified Castrejon told defendant to leave because he was "'not going to lose my wife and my kids for you. Just leave. I don't want anything to do with you anymore.'" Finally, Ramirez testified defendant replied, "'Well, if you don't come with me on good terms, I am going to give it to you where it hurts most then. First, I am going to kill your fucking wife, then you.'" Officer Campuzano testified that Ramirez did not mention this particular threat when she was interviewed on the night of the incident. Castrejon testified no threats were made by defendant at any time. Defendant stepped back into the limousine and Castrejon drove back to his house.

Castrejon pulled the Lincoln Town Car back into his driveway and parked next to the Chevy Silverado truck. Two of the couple's children, Misael and Araceli, were in the front yard. A minute later, the limousine stopped on the street in front of the house and defendant stepped out. Defendant yelled something about "Jose" and money. Araceli told defendant to leave or she would call the police. Defendant responded, "'Go ahead, call the fucking cops. I don't care.'" Defendant returned to the limousine and

retrieved a handgun. As defendant walked toward the driveway, Araceli ran indoors to call 9-1-1.

On the night of the incident, Ramirez told Officer Campuzano that defendant approached the passenger side of the Lincoln Town Car and yelled, "'Leave him alone, you fucking bitch. He's going to be with me.'" Ramirez also reported to Campuzano on the night of the incident that she opened the passenger door and poked her head out, looking back and making eye contact with defendant.

As Araceli was calling the police, defendant fired four shots from approximately 30 feet away from the Lincoln Town Car. The Lincoln Town Car was struck by a bullet which penetrated the rear window. Police discovered bullet impressions on the tailgate of the Chevy Silverado truck. Defendant left the scene in the limousine.

Shortly thereafter, police detained the limousine two miles away from the house. While being arrested, defendant told the officers a gun was in her purse and that she might have drugs in her purse. In a "binocular case," police found three large plastic "baggies" containing a white substance. One of the "baggies" had "14.5" written on it. The three "baggies" weighed 14.5 grams, 13.7 grams, and 4.5 grams, respectively. Officer Campuzano, who has experience observing methamphetamine and observed the "baggies" at the scene of defendant's arrest, testified that in her opinion the white substance was methamphetamine. Officer Campuzano also opined the amount found in the limousine was consistent with an intent to possess methamphetamine for the purpose of sale. The police also found additional "baggies" and a small black semiautomatic handgun in a makeup bag in the limousine.

In addition to the evidence discussed above, defendant stipulated to the following at trial: "'It is hereby stipulated that the defendant Laura P. Hernandez has personal knowledge of the controlled substance methamphetamine, including its presence

on the date of July 23rd, 2005, and also knows the substance's nature and character as a controlled substance.'"

DISCUSSION

Sufficiency of Evidence of Premeditation

Defendant first argues there is insufficient evidence in the record to support the jury's finding that the attempted murder of Ramirez and Castrejon was premeditated and deliberate.

We review the entire record in the light most favorable to the judgment, and decide whether there exists substantial evidence from which any rational trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Chatman* (2006) 38 Cal.4th 344, 389.) Where the evidence of guilt is primarily circumstantial, the standard of review is the same. (*People v. Holt* (1997) 15 Cal.4th 619, 668.) "'Deliberation' refers to careful weighing of considerations in forming a course of action; 'premeditation' means thought over in advance. . . . '"The true test [of premeditation and deliberation] is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly. . . ."'" (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.) Courts consider evidence of prior planning and motive, as well as the manner of attack, to assess whether the evidence supports an inference of premeditation and deliberation. (*Id*. at p. 1081; see also *People v. Anderson* (1968) 70 Cal.2d 15, 26-27.)

Here, there is substantial evidence supporting the jury's findings. Defendant had a motive to shoot Ramirez and Castrejon. The evidence suggests defendant sought revenge for Castrejon's conduct. As to prior planning, it is obvious defendant possessed a handgun on the night in question and, although the record is muddled, the jury could find defendant had issued death threats on two occasions

(including just before she walked to the limousine to pick up the gun). It is also clear defendant had the time necessary to plan the simple (but often effective) manner of attack — picking up a gun and opening fire. Although the evidence of defendant's actions is also consistent with a factual finding of no deliberation or premeditation (i.e., in a blind fury, defendant picked up a gun carried for unrelated purposes and opened fire), our role is not to reweigh the evidence.

Effect of Admission of Hearsay Evidence

Relatedly, defendant argues the court erred by admitting hearsay evidence pertaining to an alleged threat made by defendant. (See Evid. Code, § 1200, subd. (a) ["'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated"].) The People concede the court erred by admitting the evidence at issue, but contend such error was harmless. We will reverse the judgment only if "it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*People v. Watson* (1956) 46 Cal. 2d 818, 836.) But before reaching this analysis, we will put into context the evidence that was improperly admitted.

The prosecution asked Ramirez whether she believed defendant had threatened her "in the past," apparently meaning before the night of defendant's criminal conduct. The court allowed Ramirez to answer this question affirmatively,[3] but sustained

[3] The court overruled defendant's relevance objection to this question, apparently finding Ramirez's "state of mind" was relevant evidence. It seems strange, however, that the prosecution would seek to elicit testimony as to Ramirez's "state of mind." If anything, evidence that Ramirez was in a fearful state of mind would logically assist the defense, as a reasonable jury could infer Ramirez's state of mind adversely affected her ability to rationally perceive events. It seems more likely the prosecutor sought to establish the truth of the matter, i.e., that a threat had been issued by defendant two days prior to the shooting, by asking about whether Ramirez believed such a threat had been issued.

defendant's hearsay objections to questions asking the basis for Ramirez's belief. Ramirez's answer to these follow-up questions would have been hearsay, as Ramirez's answers would have been offered for the truth of an out-of-court statement by Castrejon that defendant threatened Castrejon and the rest of his family, as explained below.

Subsequently, Castrejon testified. Castrejon denied defendant ever threatened him. He further denied the following question, "Didn't you tell the police [on the night of the shooting] that about two nights ago you were talking to the defendant on the phone when she threatened to kill you, your wife and the children if you did not leave your wife for her?" As the court and the parties implicitly recognized, this question elicited Castrejon's out-of-court statement, but was nevertheless admissible as a prior inconsistent statement (to which Officer Campuzano would later testify). (Evid. Code, § 1235.)

The prosecutor then called Officer Campuzano as a witness. The following exchange occurred. "Q. [Prosecutor]: Specifically, did you ask [Ramirez] if her husband, Jose Castrejon, had been threatened on the phone by the defendant? [¶] [Defense]: Objection. Speculation. It also calls for hearsay. [¶] The Court: Overruled. [¶] [Officer Campuzano]: I didn't ask her that but she just volunteered the information. [¶] [Defense]: Objection. Nonresponsive after 'that.' [¶] The Court: The answer 'I didn't ask her that' may remain. Everything else is ordered stricken. [¶] [Prosecutor]: Did she tell you anything in regards to her husband being threatened by the defendant? [¶] [Witness]: Yes, she did. [¶] [Defense]: Objection. Leading. [¶] The Court: Overruled. Answer may remain. [¶] [Prosecutor]: What did she tell you? [¶] [Officer Campuzano]: She said that the defendant had threatened to kill Mr. Castrejon and his entire family if he did not leave his wife for her." Officer Campuzano's testimony was inadmissible because it called for hearsay (indeed, double hearsay, as the truth of the threat's existence relies on the accuracy of Officer Campuzano's retelling of Ramirez's out-of-court statement to Officer Campuzano about Castrejon's description to Ramirez of

a telephone conversation with defendant). Moreover, the testimony did not represent a prior inconsistent statement (Evid. Code, §§ 770, 1235) or consistent statement (Evid. Code, §§ 791, 1236) of Ramirez as she was not allowed to testify to the truth of the threat's existence in the first instance on hearsay grounds.

The prosecutor also asked Officer Campuzano about Castrejon's statements to her on the night of the shooting. "[Prosecutor]: And did [Castrejon] tell you about two days prior to the incident whether or not the defendant had threatened him? [¶] [Officer Campuzano]: Yes. [¶] [Prosecutor]: What did he tell you? [¶] [Officer Campuzano]: He said that the defendant had threatened to kill him, his wife and his kids if he would not leave his wife for her." Officer Campuzano's testimony was admissible here because it brought forth prior statements by Castrejon inconsistent with his testimony, and Castrejon had not yet been excused from giving further testimony in the action. (Evid. Code, §§ 770, 1235.)

After Officer Campuzano completed her testimony, defendant argued to the court that "the statement made by Mr. Castrejon to his wife concerning what my client said is hearsay and then the second level when it went to Officer Campuzano . . . ." The court responded: "[T]he court had ruled . . . the out-of-court statements made especially by Castrejon, but also by Guadalupe, are statements made while they have already, both of them, been excused but subject to recall. Either side can feel free to recall them and ask anything about the prior statements but the whole of their statements are in some instances consistent with their testimony and in many ways inconsistent with their testimony and so the court felt that the entirety of the statements needed to come in and also . . . for clarity to the jury but also because the Evidence Code then supports the entirety of the statement and that's why the court had ruled that the court wasn't going to inhibit either side in getting in what Jose or Guadalupe had said to the police officers now that they have testified and both are still subject to recall."

Although it is unclear whether defendant timely made a hearsay objection to the precise questions which elicited the objectionable testimony, we agree with the parties that (assuming the objection was timely and sufficient) the court erred by admitting the testimony at issue. Nevertheless, the court's error was harmless. The existence of the threat was established by Officer Campuzano's testimony pertaining to Castrejon's admissible out-of-court statement. If the jury disbelieved this testimony, it could hardly believe Officer Campuzano's testimony bearing on what Ramirez said about the same threat. Such a conclusion would defy logic, as the truth of Ramirez's statement to Officer Campuzano depended upon whether the jury believed Castrejon told Ramirez (truthfully) about the threat. For the objectionable evidence to have possibly played any decisive role in the jury's deliberations, the jury would have had to conclude Officer Campuzano lied about or misunderstood what Castrejon told her (thus eliminating the legitimate evidentiary basis for the existence of a prior threat) but accurately related what Ramirez told her and further concluded what Ramirez told Officer Campuzano was, in fact, true (even though Castrejon did not actually say this to Officer Campuzano). We do not think it reasonably probable the verdict would have been more favorable to defendant had the court excluded the hearsay testimony provided by Officer Campuzano regarding Ramirez's out-of-court statements.

Ineffective Assistance of Counsel In Not Requesting CALCRIM No. 522

Next, defendant argues her trial counsel provided ineffective assistance of counsel. (See *Strickland v. Washington* (1984) 466 U.S. 668, 687 [claim of ineffective assistance must show deficient performance and prejudice].) In particular, defendant claims her trial counsel should have requested a particular jury instruction, CALCRIM No. 522, which provides in relevant part: "Provocation may reduce a murder from first degree to second degree. The weight and significance of the provocation, if any, are for you to decide. [¶] If you conclude that the defendant committed murder but was

provoked, consider the provocation in deciding whether the crime was first or second degree murder." Defendant claims this instruction should have been modified to explicitly inform the jury that "[p]rovocation may reduce an attempted premeditated murder to only attempted murder."

CALCRIM No. 522 is a "'pinpoint' instruction relating particular evidence to an element of the offense, and therefore need not be given on the court's own motion." (*People v. Rogers* (2006) 39 Cal.4th 826, 878 (*Rogers*) [analyzing substantially similar instruction, CALJIC No. 8.73].) The court provided the jury with several instructions pertaining to defendant's mental state. The court first provided CALCRIM No. 600, which indicates that for defendant to be found guilty of attempted murder, the People must prove defendant "intended to kill" the victim.

The court also instructed the jury with CALCRIM No. 601, which pertains specifically to the question of deliberation and premeditation. As modified, this instruction read in relevant part: "If you find the defendant guilty of attempted murder, you must then decide whether the People have proved the additional allegation that the attempted murder was done willfully, and with deliberation and premeditation. [¶] The defendant acted willfully if she intended to kill when she acted. The defendant deliberated if she carefully weighed the considerations for and against her choice and, knowing the consequences, decided to kill. The defendant premeditated if she decided to kill before acting. [¶] The length of time the person spends considering whether to kill does not alone determine whether the attempted killing is deliberate and premeditated. . . . The test is the extent of the reflection, not the length of time."

In addition, the court instructed the jury with CALCRIM No. 603, an instruction pertaining to attempted voluntary manslaughter caused by heat of passion, a lesser included offense for attempted murder. This instruction, as provided, states: "An attempted killing that would otherwise be attempted murder is reduced to attempted voluntary manslaughter if the defendant attempted to kill someone because of a sudden

quarrel or in the heat of passion. [¶] The defendant attempted to kill someone because of a sudden quarrel or in the heat of passion if: [¶] 1. The defendant took at least one direct but ineffective step toward killing a person; [¶] 2. The defendant intended to kill that person; [¶] 3. The defendant attempted the killing because she was provoked; [¶] 4. The provocation would have caused a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment; [¶] AND [¶] 5. The attempted killing was a rash act done under the influence of intense emotion that obscured the defendant's reasoning or judgment. [¶] Heat of passion does not require anger, rage, or any specific emotion. It can be any violent or intense emotion that causes a person to act without due deliberation and reflection. [¶] In order for heat of passion to reduce an attempted murder to attempted voluntary manslaughter, the defendant must have acted under the direct and immediate influence of provocation as I have defined it. While no specific type of provocation is required, slight or remote provocation is not sufficient. Sufficient provocation may occur over a short or long period of time. [¶] It is not enough that the defendant simply was provoked. The defendant is not allowed to set up her own standard of conduct. You must decide whether the defendant was provoked and whether the provocation was sufficient. In deciding whether the provocation was sufficient, consider whether a person of average disposition would have been provoked and how such a person would react in the same situation knowing the same facts. [¶] [If enough time passed between the provocation and the attempted killing for a person of average disposition to cool off and regain his or her clear reasoning and judgment, then the attempted murder is not reduced to attempted voluntary manslaughter on this basis]."

Defendant asserts the combination of these instructions with the absence of a modified CALCRIM No. 522 could have misled the jury into thinking it had only two options — premeditated attempted murder and attempted voluntary manslaughter — rather than the three options that actually existed: premeditated attempted murder, attempted murder (not premeditated), and attempted voluntary manslaughter. As

defendant argues in her brief, "[p]rovocation may negate premeditation even if it is not the sort which would arouse the passions of an ordinarily reasonable person."

Defendant's argument was rejected by our Supreme Court with regard to CALJIC instructions. (*Rogers*, *supra*, 39 Cal.4th at p. 880.) "[*People v. Valentine* (1946) 28 Cal.2d 121 (*Valentine*)] does not stand for the general proposition that the standard heat-of-passion voluntary manslaughter instructions are always misleading in a homicide case where the jury is instructed on premeditated murder and there is evidence of provocation, or that such manslaughter instructions always must be accompanied by instructions on the principle of inadequate provocation set out in CALJIC No. 8.73. In the absence of instructional errors such as were present in *Valentine*, the standard manslaughter instruction is not misleading, because the jury is told that premeditation and deliberation is the factor distinguishing first and second degree murder. Further, the manslaughter instruction does not preclude the defense from arguing that provocation played a role in preventing the defendant from premeditating and deliberating; nor does it preclude the jury from giving weight to any evidence of provocation in determining whether premeditation existed." (*Ibid*.)

Here, the court did not make the instructional errors present in *Valentine* and referenced by the *Rogers* court — instructing the jury that if defendant had the "specific intent to kill, the killing was first degree murder" and instructing the jury that the "defendant bore the burden of raising a reasonable doubt as to the degree of the murder." (*Rogers*, *supra*, 39 Cal.4th at p. 880.) Furthermore, defendant's counsel extensively argued in his closing argument that provocation played a role in preventing defendant from premeditating and deliberating. Finally, defendant does not identify and we do not observe any difference between the CALCRIM and CALJIC instructions necessitating a different result in this case than that reached in *Rogers*, *supra*, 39 Cal.4th at pages 878-880. The law provided to the jury in the instructions was accurate and we presume the jury followed the law with which it was provided.

Sufficiency of Evidence Supporting Methamphetamine Convictions

Finally, defendant contends the People did not introduce sufficient evidence to prove the white substance found in the limousine (in three separate "baggies") was methamphetamine. "Ordinarily the narcotic character of a substance is proved by a trained expert who has made a chemical analysis thereof." (*People v. Galfund* (1968) 267 Cal.App.2d 317, 320 (*Galfund*).) Here, no evidence of a chemical analysis of the white powder found in the limousine was introduced. Defendant posits her drug offense convictions cannot stand because Officer Campuzano's identification of the substance (based on her visual observation) was not substantial evidence of the identity of the substance under the circumstances of this case.[4]

The question of whether a judgment can be affirmed based on circumstantial evidence plus an expert's identification by sight (not chemical analysis) of an illegal substance is a fact sensitive inquiry. (But see *Cook v. United States* (9th Cir. 1966) 362 F.2d 548, 549 [suggesting existence of bright line rule by noting "whether or not a powder or substance is a narcotic cannot be determined by a mere inspection of its outward appearance"]; Blanchard & Chin, *Identifying the Enemy in the War on Drugs: A Critique of the Developing Rule Permitting Visual Identification of Indescript White*

[4] Defendant stipulated she had "personal knowledge of the controlled substance methamphetamine, including its presence on the date of July 23rd, 2005, and also knows the substance's nature and character as a controlled substance." This stipulation appears to be tailored to prove two elements in the possession and transportation charges against defendant. The jury instructions for count 5 and count 6 require the People to prove: "The defendant knew of its presence" and "The defendant knew of the substance's nature or character as a controlled substance." The jury instructions also require (in separate elements) the People to prove: "The defendant [possessed/transported] a controlled substance" and "The controlled substance was methamphetamine." It does not appear that the stipulation was intended to prove that the substance actually found by the officers in the three "baggies" was methamphetamine or that defendant possessed that methamphetamine. Thus, although defendant stipulated to having personal knowledge of the presence of methamphetamine on July 23, this stipulation plays no role in our review of the sufficiency of the evidence supporting the jury's finding that the three bags of white powder were methamphetamine.

Powder in Narcotics Prosecutions (1998) 47 Am. U.L.Rev. 557, 610-611, fn. 324 [arguing courts should require prosecutors to prove the identity of substances only through chemical testing or by stipulation, unless the defendant destroys or otherwise disposes of the evidence].)

In some California cases, such evidence has been deemed insufficient. The opinion testimony of officers as to the likely contents of balloons a defendant attempted to swallow (the officers were familiar with the contents of balloons with a similar appearance) is not substantial evidence, because "their observation of the outward appearance of the balloons[] was speculative and conjectural, and was not competent evidence that the balloons in the possession of defendant contained heroin." (*People v. McChristian* (1966) 245 Cal.App.2d 891, 897.) In another case, a chemical analysis proving the substance contained cocaine (the test did not identify the substance as cocaine base) and an officer's testimony that the substance was cocaine base (an opinion derived from his visual observations) "was sufficient to establish defendant possessed some form of cocaine, [but] it was insufficient to establish beyond a reasonable doubt that defendant possessed cocaine base." (*People v. Adams* (1990) 220 Cal.App.3d 680, 684, 688 [reversing conviction under Health and Safety Code section 11351.5 for lack of substantial evidence].)

Conversely, in a case in which physical evidence was excluded due to an illegal seizure, an expert officer's observations and opinions regarding defendants' use of drug lingo (in discussing the need to obtain more heroin) and paraphernalia (one defendant cut open a balloon, placed a small amount of powder in a spoon, added water with an eyedropper, mixed and heated the contents, and inserted the mixture into his vein with a needle) is substantial evidence of heroin possession. (*Galfund, supra*, 267 Cal.App.2d at pp. 320-322.) So is testimony confirming a defendant's receipt of a "capsule" (which was never recovered) when the other 16 "capsules" (similar in appearance and grouped with defendant's capsule) were tested and determined to consist

of heroin. (*People v. Ihm* (1966) 247 Cal.App.2d 388, 392; see also *People v. Stump* (1971) 14 Cal.App.3d 440, 443-444 [substantial evidence where appellant swallowed balloons when arrested, but he was observed buying the balloons from the same source which was tested and determined to be heroin].) And so is officer testimony opining the substance flushed down the toilet upon the appearance of the officers was cocaine, along with evidence that the substance flushed appeared to be "the other half of the cocaine" that police did recover and test. (*People v. Sonleitner* (1986) 183 Cal.App.3d 364, 369-370 ["the nature of a substance, like any other fact in a criminal case, may be proved by circumstantial evidence"].)

There is substantial evidence supporting the judgment against defendant in the instant case. Officer Campuzano, based on extensive training and experience, opined that the substance recovered from the limousine was methamphetamine. Officer Campuzano was able to examine the white powder itself, as the "baggies" were recovered from the limousine. Moreover, defendant admitted there might be drugs in the limousine. The circumstantial evidence that the substance in the baggies were illegal drugs was strong: the substance was divided into three "baggies," one of which was labeled with a number consistent with its measured weight in grams; the "baggies" were concealed in a "binocular case"; additional empty plastic "baggies" were also found inside the limousine; and testimony by Castrejon confirmed defendant smoked "crystal" with him. We are not presented with a case in which the prosecution sought to rely solely on the opinion of Officer Campuzano to obtain convictions of the drug offenses.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.